

# Exhibit

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December 26, 2019

**VIA FEDEX and EMAIL: jditomaso@alltherooms.com**

Mr. Joseph DiTomaso  
AllTheRooms Inc.  
425 W 53rd Street  
Suite 408  
New York, NY 10019

**Re: Champlin v. AllTheRooms**  
**Our File No.: 00529-0034**

Dear Mr. DiTomaso,

We write on behalf of our client Eric Champlin, a photographer, for purposes of resolving a case of copyright infringement against you by our client. This demand is privileged from disclosure pursuant to FRE Rule 408.

Please provide this letter to your general liability insurance carriers or other providers of insurance that may cover this claim.

*Eric Champlin ("Champlin")*

Our client is an experienced professional photographer who makes a living from photography. Champlin is a freelance outdoor, travel and events writer and photographer for the Atlanta Journal-Constitution, and founder & editor of AtlantaTrails.com. Prior to transitioning to freelance photographer, Champlin worked as a Senior Art Director to Creative Director for large brands like AT&T, Delta Air Lines, Verizon, Maybelline and Garnier. His freelance clients include Blue Cross / Anthem, Georgia Pacific, Capital Lighting, Moptop Hair and Fuzzy Duck.

Champlin retains all copyrights to his photographs. Champlin licenses his copyrighted Works, such as the one in this case, for commercial use.

In 2015, Champlin created the image entitled "tallulah gorge north south rim trails 01", hereinafter referred to as the "Work."

The Work at issue is shown below.

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Champlin registered the Work with the Register of Copyrights on June 24, 2018 and was assigned the registration number VA2-109-570, a copy of which is enclosed.

*Infringement by AllTheRooms Inc. ("ATR")*

The infringement at issue was identified on October 22, 2019. We have enclosed contemporaneous evidence of the infringement by ATR.

You have employed our client's Work in at least the manner indicated in the evidence attached. Your unauthorized use commenced on at least the date indicated above. You are fully aware that the Work you used is our client's Work. No one from your company ever sought a license from our client to use the Work for any purpose.

You have copied, displayed and distributed our client's Work without permission, license or consent. The use of a creator's photographic image without written consent or license violates the United States Code, Title 17, and The Copyright Act. The Copyright Act provides for entry of an injunction directing removal of the offending materials pending litigation. This letter shall serve as formal notice that you immediately cease and desist all unauthorized uses of our client's Work. Any such further uses shall be at your peril.

If you possess a contract, license, agreement or writing on which you will rely for authorization of your use of our client's Work, please provide us with this evidence so we may avoid further controversy or litigation. Otherwise, we will be forced to assume that your use violated the law.

*Damages*

Copyright law provides several different elements of compensation to Champlin when a work is infringed or altered. Section 504 permits Champlin to recover actual damages plus "any additional profits of the infringer that are attributable to the infringement and

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are not taken into account in computing the actual damages,” or statutory damages of up to \$150,000 per work infringed if the registration predated the infringement. Champlin can present both damages theories to the jury and select the higher award any time prior to entry of judgment.

Academic studies have demonstrated that the use of good quality photographs more effectively market and advertise products and drive sales. Champlin's photographs are of the highest quality. Champlin's photographs are also scarce since he is one of the only sources of such quality photographs.

Champlin's damages are not limited to what he would have agreed to license the Work for prior to the infringement. Rather, Champlin's actual damages will be measured by the fair market value of the photograph considering ATR's use to sell and promote its business. Champlin's actual damages must be measured in light of ATR's use of Champlin's high quality and unique Work.

This is consistent with federal courts' approach to broadly construing the term “actual damages” to favor victims of infringement. See, e.g., *Davis v. Gap, Inc.*, 246 F.3d 152, 164 (2d Cir. 2001). The fair market value approach for calculating damages is an accepted approach to valuing the defendants' uses of photographs. See *Leonard v. Stemtech Int'l, Inc.*, Nos. 15-3198, 15-3247, 2016 U.S. App. LEXIS 15565 (3d Cir. Aug. 24, 2016). In addition, Champlin can offer evidence of the actual cost to take the photograph infringed on a time and materials basis.

Section 504 of the Copyright Act permits Champlin to recover actual damages plus “any additional profits of the infringer that are attributable to the infringement and are not taken into account in computing the actual damages.” Therefore, Champlin will also be entitled to ATR's profits from the infringement, based upon the revenue ATR earned in connection with the use of Champlin's Work.

Alternatively, Champlin could seek statutory damages for infringement in an amount of up to \$30,000 per work infringed if the registration predated the infringement. There is also the possibility that a judge or jury could determine that ATR's infringement was willful. If ATR's infringement was shown to be willful, the statutory damage award would increase to an amount up to \$150,000 per work infringed.

#### *Demand*

In order to determine how to proceed, please provide us with information and documents showing:

1. the full nature and extent of the use of our client's Work, in any and all formats;

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2. representative copies in any and all tangible form and media in which our client's Work was incorporated or employed; and
3. the source of the Work.

Upon receipt of this information we will consider and determine an appropriate amount required to be paid to our client in compensation.

Please carefully consider this letter and the associated exhibits and provide them to your attorneys and insurance carriers. If we do not receive a response from you or a representative by December 10, 2019, we will take further steps to protect our client's rights. We look forward to your prompt response.

Sincerely,

**SRIPLAW**



Joseph A. Dunne

JAD/bmb  
Enclosures



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February 5, 2020

**VIA FEDEX and EMAIL: jditomaso@alltherooms.com**

Mr. Joseph DiTomaso  
AllTheRooms Inc.  
425 W 53rd Street  
Suite 408  
New York, NY 10019

**Re: Champlin v. AllTheRooms**  
**Our File No.: 00529-0034**

Dear Mr. DiTomaso,

We write this follow up letter on behalf of our client Eric Champlin, for the purposes of resolving a case of copyright infringement against you by our client. This demand is privileged from disclosure pursuant to FRE Rule 408.

Enclosed please find our prior letter dated December 26, 2019, wherein we detailed the basis of the copyright infringement claim against you, including the evidence of infringement.

We note that a review of the accused infringing webpage shows that the infringement has been removed. However, this does not dispose of our client's claim. It is imperative that you respond to us. If we do not hear back from you, we will be forced to take further steps to protect our client's rights including by filing a lawsuit against you. We also repeat our demand that you tender this claim to your insurance carrier. We look forward to your prompt response.

Sincerely,

**SRIPLAW**

A handwritten signature in blue ink, appearing to read 'Joseph A. Dunne', with a stylized flourish at the end.

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Joseph A. Dunne

JAD/bmb